



City of Gilroy

STAFF REPORT

Agenda Item Title: Introduction and First Reading of an Ordinance of the City Council of the City of Gilroy Adding Chapter 5 to the Gilroy City Code Relating to Banning the Use of Certain Public Rights-of-Way as Sleeping or Living Accommodations

Meeting Date: June 5, 2023
From: Jimmy Forbis, City Administrator
Department: Administration
Submitted By: Bryce Atkins, Assistant to the City Administrator
Prepared By: Bryce Atkins, Assistant to the City Administrator

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

1. Motion to read the ordinance by title only and waive further reading of the ordinance; and
2. Introduce an ordinance of the City Council of the City of Gilroy adding Chapter 5 to the Gilroy City Code relating to banning the use of certain public rights-of-way as sleeping or living accommodations.

BACKGROUND

The issue of the unhoused, both the conditions they face as well as the impacts on communities, has been in the national spotlight for years and has been an issue that sees increasing coverage in the media and in resident calls for service. The City Council has discussed this topic and formed an Unhoused Ad Hoc Committee to help address some of these challenges. Previous Council discussions on this matter include the following:

- July 5, 2022 – Discussion was held about the unhoused and efforts to address no-camping prohibitions. Council authorized the Gilroy Police Department (“GPD”) to enforce no-camping ordinances on public property if it offers space at

a homeless shelter to individuals beforehand and ensures that the particular shelter that it is offering to connect the individual with could accommodate their needs pursuant to The Americans with Disabilities Act (“ADA”). Additionally, Council authorized City personnel to clean and clear encampments in public parks and other public lands in compliance with a written protocol – GPD Police Policy 411 – that provides a number of safeguards required by the Courts, including outreach and notice to occupants, provision of social services, photographic documentation, safeguarding of occupants’ personal property, and the making available of shelter space for displaced occupants.

- September 12, 2022 – Discussion was held about what other cities have done and that is consistent with the Boise decision and that an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations would be constitutionally permissible. Staff received directions to bring back key points for a potential ordinance that would prohibit camping in certain locations.
- March 20, 2023 – Discussion on draft key policy points for a potential ban on what was referred to as camping in and near parks, schools, daycares, and critical infrastructure. The Council provided feedback to staff on modifications to be made and their concerns with the language. The ordinance for introduction this evening was based on a modified policy outline based on Council’s comments at this meeting.
- May 15, 2023 – Discussion was held regarding the proposed ordinance to obtain direction if the ordinance was to proceed with introduction and a public hearing. Discussion included the impact assessment of the ordinance and approach to enforcement. The City Council directed no changes to the ordinance at this meeting.

City Supported Services and Programs for the Unhoused

In addressing this issue overall, the City has and continues to help provide or coordinate the provision of services and regulations to lessen impacts on the community. Some of the work that the City has contributed towards this effort includes the following:

Work performed to coordinate and provide services to the unhoused:

- Support Affordable Housing Efforts – This includes the Measure A Housing Project at the 8th and Alexander location and supporting the efforts alongside Santa Clara County to bring additional affordable housing programs to Gilroy.
- Safe Parking Program – although the City was unable to identify a suitable service provider, the project is still a standing recommendation for pursuit by the City.
- Partner with the City of Morgan Hill – the City has been working with Morgan Hill on emergency response and unhoused issues, including consistent inclement weather sheltering policies and programs.

- Continue supporting unhoused service providers through CDBG grant funding – The City Council recently approved the most recent CDBG allocations to our unhoused service providers on May 1, 2023.
- Coordinate monthly check-in meetings with lead unhoused service providers to address local unhoused issues – Community Development staff has taken a leadership position to help coordinate these meetings of service providers to help provide services to the unhoused in the community.
- Endorsement of Destination Home’s Community Plan to End Homeless.
- Researching an agency to provide drug rehabilitation, job training, and job placement services.
- Partner with the County Office of Supportive Housing – this has helped the City to gain access to its federal Permanent Local Housing Allocation funding.
- Quality of Life Officers – hired two officers who are trained and tasked to both help connect the unhoused to service providers and, when necessary, enforce laws in and around encampments.

Work being performed to mitigate impacts:

- Mobile Garbage Removal Program – the City engaged a contractor to do select cleanup activities, and now the City has concluded the hiring process to hire two part-time employees to help with roving cleanup activities.
- Purchase of a garbage removal dump truck – this has assisted Code Enforcement and other staffing in the garbage and illegal dumping cleanups.
- Organization of community cleanup days – this work continues, with two cleanup events done, one on May 20th and continuing monthly.

Current Policy Restated

At the July 5, 2022 meeting, Council authorized the Gilroy Police Department (“GPD”) to enforce no-camping ordinances on public property if it offers space at a homeless shelter to individuals beforehand and ensures that the shelter that it is offering to connect the individual with could accommodate their needs pursuant to the Americans with Disabilities Act (“ADA”). Additionally, Council authorized City personnel to clean and clear encampments in public parks and other public lands in compliance with a written protocol – GPD Police Policy 411 – that provides several safeguards required by the Courts, including outreach and notice to occupants, provision of social services, photographic documentation, safeguarding of occupants’ personal property, and the making available of shelter space for displaced occupants.

Initial Council Direction

The City had a meeting on September 12th where a discussion of the Los Angeles ordinance was conducted. The ordinance, which sought to establish a no-camping ban surrounding daycares and parks, was adopted by the City of Los Angeles but had not yet taken force. At the conclusion of this meeting, staff received direction to bring back key points for a potential ordinance that would prohibit unhoused camping in certain locations. Generally, this included:

- 500 feet of schools, parks, daycares, playgrounds, and other locations where children are expected.
- In areas with critical infrastructure.
- Locations that would restrict access to public safety or public infrastructure locations.
- Creeks.
- Definition of camping.

ANALYSIS

Ordinance Overall

The basis for the ordinance, as discussed at previous meetings, is tied to language that scaled back the breadth of the *Boise* decision. Legal challenges presented by the 2019 *Boise* decision restricted the ability of local agencies to enforce ordinances against camping on public property. The key issue that was presented is the court decision explaining that a municipality cannot criminalize sitting, sleeping, or lying in public “when no sleeping place is practically available in any shelter.” However, there was language that scaled back the breadth, as well as other courts elaborating on the limits, such as:

Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. *Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible* [emphasis added]. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes. (Id. at 1136.)

Revisions

At the March 20, 2023 Regular Meeting, Council discussed the key policy points, making changes and asking clarification questions. Topics of adjustments included the inclusion of creeks, the need to refine language regarding the degree of prohibition in parks, and a need for simplification when it came to critical infrastructure. At the May 15th meeting, a proposed ordinance was presented, which included these edits. No further edits were directed.

Ordinance Provisions

The ordinance focuses on the ban on public rights-of-way. As defined in the proposed ordinance, the public right-of-way is all property that is owned, managed, or maintained by the City or where the City possesses a property interest allowing public use of such property (such as a right-of-way interest) and shall include, but not be limited to, any

public street, space, ground, building or structure. The enforcement provisions only pertain to these areas. For example, if an individual is attempting to use property that is not owned by the City, such as a creek owned by Santa Clara Valley Water District, the City would not enforce against it under this ordinance since it is not a public right-of-way.

Ordinance Prohibition Areas

Below is a brief description regarding the classifications that drive the prohibition areas surrounding using public rights-of-way as sleeping or living accommodations. These areas are described and analyzed in the staff report for the May 15, 2023 agenda item regarding the proposed ordinance. All these prohibition area categories are contained within the ordinance under Section 5.2, beginning on the third page of the attached ordinance.

5.2(a) Parks and playgrounds

Parks and playgrounds are contained in the ordinance but with different language regarding the ban from the other prohibition areas. The ordinance was modified from the original language proposed on March 20, 2023. Originally combined into a single category along with schools and daycares, parks were pulled out separately from the others as a result of discussion with the City Council, wanting to make allowances for all residents, housed and unhoused, to use the park in such a manner as is customary for a park. There was a concern raised that the language of sitting, lying, and sleeping in the park would limit the unhoused from using the park for its customary types of use. As such, the language for this section was modified from the original proposal. The language in the ordinance states:

No person shall obstruct by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property on a street, sidewalk, or other public right-of-way in the following locations when it reasonably appears, in light of all the circumstances, the participants in conducting these activities are in fact using the area as a sleeping or living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging:

- 1. Within five hundred (500) feet of any park or playground. This prohibition applies all year, overnight, on any weekends and weekdays, even when such facilities may be generally considered closed.*

This change allows for the use of the park for normal, non-camping park purposes while not allowing camping in the park.

5.2(b) Other public rights-of-way

This section identifies the other public rights-of-way that are prohibited from use as sleeping or living accommodations. Each of these falls under this prohibition language:

No person shall obstruct by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property on a street, sidewalk, or other public right-of-way in the following locations:

There are eight categories identified, each provided below. Of these, three are not tied to any specific, fixed location, and two categories are too small and numerous to map efficiently and effectively. Therefore, there are three of these categories that were used to designate the prohibited areas on the map in Attachment A to the ordinance, in addition to parks as mentioned above. They are identified with an **(m)** added to the end of the categories below for mapped prohibition areas. The eight categories in this section of the ordinance are as follows:

1. *In a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time;*
2. *Within five hundred (500) feet of any school or daycare facility. This prohibition applies all year, overnight, on any weekends and weekdays, even when such facilities may be generally considered closed. (m)*
3. *Within one hundred (100) feet of critical infrastructure, including water wells, storm drain basins, railways, bridges and under- and over-passes. (m)*
4. *Within ten (10) feet of any operational or utilizable building entrance, exit, driveway or loading dock.*
5. *Within five (5) feet of any fire hydrant, fire plug, or other fire department connection.*
6. *In a manner that obstructs or unreasonably interferes with the use of the right-of-way for any activity for which the City has issued a permit.*
7. *In a manner that obstructs any portion of any street or other public right-of-way open to use by motor vehicles, including any portion thereof marked as a bike lane.*
8. *City creeks and creek embankments within Gilroy City limits. (m)*

Overall Impact Information

The staff report for the May 15, 2023 City Council Regular Meeting provided an extensive analysis of each mapped category and should be reviewed for that analysis. Overall, the only currently known encampments within the prohibition area that are on public rights-of-way are individuals located on the City-owned portion of Uvas Creek, roughly estimated at between 75 and 100 individuals.

In totality, 24.4% of the total area contained within the City Limits falls within the prohibition area under this ordinance, leaving 75.6% of the City's total area not affected by this ordinance, which is most of the total area of the City. The original report had

31.6% of the total City area affected, however further map refinement requires an adjustment to the percentage. Below is the breakdown from the City's GIS data of the total City area, and the total amount of area affected by this ordinance within the City limits:

Prohibition Areas	Acreage
Schools	1,073.43
Preschools and Daycares	526.22
Parks	1,526.28
Water Division Wells	25.20
Gilroy Bridges	31.12
Railroad – Only the portion in City Limits	119.35
Under and Over Passes	20.99
City portion of the Creek	28.25
Subtotal of Prohibition Coverage	3,350.84
Duplicate Area Adjustment within City Limits	-762.97
Proposed Area Covered by Prohibition	2,587.87
City Limits	10,586.75
Percent of City Area Affected by Prohibition	24.44%
Percent of City Area Not Affected by Prohibition	75.56%

Enforcement

The ordinance does not criminalize sleeping in the open. It limits the locations, prohibiting the use of certain public rights-of-way from being used as sleeping or living accommodations. It provides that the only act subject to a misdemeanor is the refusal to relocate from a prohibited area when instructed to do so by a City employee.

Once the ordinance is adopted, the Quality of Life Officers and Community Development staff will engage our Local Service Providers Group to outreach to those within the prohibited areas during the 30-day waiting period for the ordinance to become effective. The intent is to allow the maximum time for accessing services from our local and regional service providers and attempting voluntary compliance. Enforcement is discretionary and subject to various staffing and budgetary constraints.

ALTERNATIVES

Council may choose to reject or modify the ordinance. Should Council determine to modify the proposed ordinance, the introduction process would be restarted with a new introduction and first reading.

FISCAL IMPACT/FUNDING SOURCE

Adopting the ordinance will not have a financial impact on the City. The costs of advertising the ordinance, as well as enforcement of such policies, will be carried out through existing staff resources and financial resources that are already appropriated each year.

PUBLIC OUTREACH

This subject has been discussed at multiple public meetings. These include the following:

- July 5, 2022;
- September 12, 2022;
- March 20, 2023;
- May 15, 2023; and
- tonight's meeting.

These discussions have focused on creating a policy to address unhoused individuals utilizing parks, creeks, and other public areas as living and sleeping accommodations. In addition, the City Council created an Unhoused ad hoc committee, which developed 14 recommendations to help both the unhoused and to mitigate the effects of the unhoused on their neighboring communities.

Additionally, the City advertised this public hearing in the local newspaper and on the City's website.

Upon adoption, the City will finalize and release informational materials and maps of the prohibited areas within City Limits and coordinate across departments to help maximize the outreach to those affected by the ordinance, as well as the public.

NEXT STEPS

Once introduced, the ordinance will be placed on the June 19, 2023 City Council Regular Meeting consent calendar for a second reading and adoption.

Attachments:

1. Proposed Ordinance with a map of affected areas as Attachment A.